

*Cary*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Canadian Commercial Corporation  
**File:** B-236850  
**Date:** January 2, 1990

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### DIGEST

1. Protest that bid must be rejected as nonresponsive where a bidder acknowledges an amendment containing a Procurement Integrity Certificate clause, but fails to complete and sign the certificate itself, is denied where bids were opened prior to December 1, 1989, but award was not made prior to that date; the requirement for the certificate, which implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988, has been eliminated in such cases by section 507 of the Ethics Reform Act of 1989.

2. Protest that shipping information contained in bid indicates that dimensions of bidder's truck exceed the dimensions specified in the invitation for bids, thus rendering the bid nonresponsive, is denied; dimensions provided by bidder under shipping information were reasonably interpreted by contracting agency as not referring to size of truck itself, and other circumstances pertaining to the bid indicated that bidder did not intend to qualify its bid.

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### DECISION

Canadian Commercial Corporation (CCC) objects to the proposed award of a contract to Pierce Manufacturing, Inc., the apparent low bidder under invitation for bids (IFB) No. DAAK01-89-B-0079, issued by the Army Troop Support Command for 30 aerial ladder firetrucks. CCC, the second-low bidder, contends that Pierce's bid is nonresponsive, and should be rejected, because Pierce failed to provide a signed and completed Procurement Integrity Certificate with its bid, and because the dimensions indicated by the bidder in the portion of its bid relating to shipping information indicate that the truck being offered exceeds the dimensions specified in the IFB.

We deny the protest.

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## BACKGROUND

The IFB specifies that offered trucks may not exceed 456 inches in length overall, including all lights, mirrors, and mounted equipment. As amended, the IFB also includes the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8, as required by FAR § 3.104-10. This clause implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (OFPP Act), Pub. L. No. 100-679, 101 Stat. 4055, 4064 (1988), which essentially provides that an agency shall not award a contract unless a bidder or offeror certifies in writing that neither it nor its employees has any information concerning violations or possible violations of the OFPP Act pertaining to the procurement. Under FAR § 52.203-8, bidders are required to list all violations or possible violations of the Act, or enter "none" if appropriate, on the Procurement Integrity Certificate, and to sign the document.

## PROCUREMENT INTEGRITY CERTIFICATE

Of the six firms that submitted bids in response to the IFB, Pierce was the apparent low and CCC the second-low bidder. When, subsequent to bid opening, CCC protested to the Army that Pierce's bid was nonresponsive because it lacked the required Procurement Integrity Certificate, the Army responded that failure to furnish the certificate at the time of bid opening was a correctable minor informality. According to the Army, the certificate relates to bidder responsibility, and is therefore not a matter of responsiveness. Accordingly, in the Army's view, the certificate can be executed by the bidder any time prior to award. In the protest filed with our Office, CCC reiterates the argument raised in its agency-level protest that failure to provide the certificate at the time of bid opening renders the bid nonresponsive.

We recently denied a protest based on CCC's argument under circumstances similar to those of the present case. See Hampton Roads Leasing, Inc., B-236564, B-236564.2, Dec. 11, 1989, 89-2 CPD ¶ \_\_\_\_. That decision is directly applicable here. Effective December 1, 1989, section 27 of the OFPP Act was suspended for a period of one year by section 507 of the Ethics Reform Act of 1989, Pub. L. No. 101-194, \_\_\_\_ Stat. \_\_\_\_ (1989), which provides that section 27 "shall have no force or effect during the period beginning on the day after the date of enactment of this Act and ending one year after such day." Accordingly, agencies are not to include the Certificate of Procurement Integrity clauses at FAR §§ 52-203-8, 52.203-9, 52.203-10, and 52.327-9 in any

solicitation issued on or after December 1, 1989, through November 30, 1990. The FAR provisions affected by the suspension were changed to provide that agencies are to amend solicitations issued prior to December 1, 1989, for which bids have not been opened or proposals received before that date, to delete the certificate provisions and clauses. In the case of solicitations for which bids have been opened or offers received prior to December 1, 1989, but where award has not been made, the situation here, agencies are to disregard the lack of a certificate in determining eligibility for award and delete the certificate clauses by administrative change. 54 Fed. Reg. 50,713 (1989).

Consistent with the FAR guidance, we find that since the statutory requirement for completion and signing of the Procurement Integrity Certificate as a condition of award has been suspended, and no contract has yet been awarded in this case, the allegation that failure to complete the certificate renders Pierce's bid nonresponsive is without merit. Hampton Roads Leasing, Inc., B-236564, B-236564.2, supra.

#### TRUCK DIMENSIONS

CCC further alleges that Pierce's bid is nonresponsive because the length indicated by the bidder in the "Guaranteed Shipping Characteristics" portion of its bid (495 inches) exceeds the maximum length for trucks specified in the IFB (456 inches). According to the protester, Pierce has taken exception to a material requirement of the IFB (that is, the maximum permissible length for the trucks), thereby rendering its bid nonresponsive.

Specifically, CCC points out that, under "Size of Container," Pierce indicated in its bid a length of 495 inches; for "Type of Container," the firm checked the space marked "Other," and added the words, "This is a 3 axle firetruck. The best is to drive under own power;" under the heading "Shipping Configuration," Pierce checked the space marked "Other," and added "Complete--ready to fight fire." Taken as a whole, CCC maintains that this portion of Pierce's bid clearly indicates that Pierce was contemplating that each truck be shipped with no container at all--that is, driven under its own power--and that the indicated length of 495 inches, consequently, could only refer to the length of the truck itself. According to CCC, since that length exceeds the maximum specified in the IFB (456 inches), this portion of the bid constitutes clear evidence that Pierce, notwithstanding its agreement elsewhere in the bid to provide a truck of the requisite

dimensions, has in fact bid on a truck that deviates materially from IFB specifications.

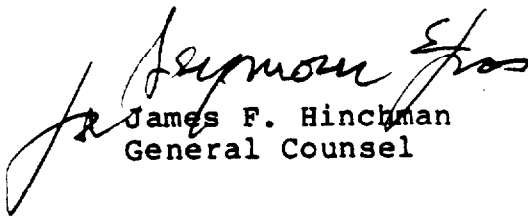
We do not agree with CCC. The purpose of the "Guaranteed Shipping Characteristics" clause is to enable the government to ascertain its total cost for a proposed contract and to establish the basis for a contract price reduction in the event the maximum guaranteed shipping weights or dimensions are exceeded. Silent Hoist & Crane Co., Inc., B-210667, Dec. 23, 1983, 84-1 CPD ¶ 16. While there are circumstances where furnished shipping information clearly indicates that the specifications will not be met, in which case the bid must be rejected as nonresponsive, Star-Line Enterprises, Inc., B-210732, Oct. 12, 1983, 83-2 CPD ¶ 450, deviating shipping dimensions do not necessarily evidence an exception to solicitation terms. We have noted, for instance, that bidders may provide guaranteed shipping weights or dimensions that exceed the actual ones, in order to eliminate the obligation to pay excess transportation costs in case the item delivered for shipment exceeds the guaranteed maximums. Silent Hoist & Crane Co., Inc., B-210667, supra. Thus, where it is reasonable for an agency to conclude from the shipping information, in the context of the bid as a whole, that the bidder did not intend to qualify its bid, the bid may properly be accepted as responsive. Id.

Applying this standard here, we find the agency properly accepted Pierce's bid as responsive. The record indicates that Pierce undertook in its bid to provide the truck specified in the IFB, and that its undertaking was not qualified by any express exception. The Army reports, moreover, that it conducted a preaward survey which verified that Pierce was offering a truck of the required dimensions, and that the firm was prepared to manufacture a truck with these dimensions. The Army further reports that, in response to its inquiry, Pierce explained that the greater length indicated in the shipping characteristics clause was an overstatement that was intended to insure that the firm would not be charged for excess freight. See Silent Hoist & Crane Co., Inc., B-210667, supra. In light of this information, we think the Army reasonably concluded that the bidder's incidental notations to the effect that the best way to ship the truck would be to drive it, and that it would be delivered ready to drive, were informational only, and were not intended to the exception to the truck length requirement. See Silent Hoist & Crane Co., Inc., B-210667, supra (statement that trucks would be shipped "loose" did not preclude interpretation that shipping materials would be used).

The protester cites Star-Line Enterprises, Inc., B-210732, supra, for the proposition that, where shipping information raises an ambiguity as to whether the item offered conforms to IFB requirements, the bid must be rejected as nonresponsive. However, we find the case inapposite to the facts of this case. In Star-Line, we found that a vehicle conforming to the length and width requirements of the IFB could not possibly have had the shipping dimensions that were cited in the protester's bid; among other things, the indicated shipping width was less than the width specified for the vehicle itself. The bid therefore properly was rejected. Here, however, the bidder's indication of 495 inches as a shipping length is not inconsistent with a shorter truck length of 456 inches.

A case more closely analogous to the facts of the present case is Silent Hoist & Crane Co., Inc., B-210667, supra. In that case, the shipping weight and dimensions of forklift trucks exceeded those specified in the solicitation. Moreover, since the bidder indicated in its bid that the trucks would be shipped "loose," the protester argued, as CCC argues here, that the excess weight and dimensions could not be attributed to containers or shipping materials for the trucks, but could only mean that the bidder's trucks themselves exceeded permissible weight and size limitations. The agency, on the other hand, determined that the increased weight and size were due to the bidder's anticipated use of shipping, blocking, and bracing materials to protect the trucks during shipment, notwithstanding the bidder's reference in its bid to shipping the trucks "loose." Under the circumstances taken as a whole, we determined that the agency had not acted unreasonably in concluding that the bidder did not intend to qualify its bid. We reach the same conclusion here.

The protest is denied.

  
James F. Hinchman  
General Counsel